THOMAS CONNELL

IBLA 89-92, et al. Decided September 20, 1990

Appeals from decisions of the Eastern States Office, Bureau of Land Management, rejecting acquired lands oil and gas lease offers. ES 37879, ES 37868, ES 37875, ES 37880, and ES 37883.

Affirmed in part; reversed in part and remanded.

1. Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Filing--Oil and Gas Leases: Description of Land--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Offers to Lease--Regulations: Interpretation

Rejection by BLM of an acquired lands oil and gas lease offer, which described the surveyed lands sought, in accordance with 43 CFR 3111.2-2(a) (1987), by legal subdivision, section, township, range, and meridian, because the offeror failed to file three copies of a map required by 43 CFR 3111.2-2(d) (1987), is improper. The map requirement is limited to acquired lands oil and gas lease offers for lands which cannot be conformed to the rectangular system of public land surveys.

APPEARANCES: Jason R. Warran, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Thomas Connell has appealed from five decisions of the Eastern States Office, Bureau of Land Management (BLM), one dated September 27, 1988,
two dated October 6, 1988, and two dated October 7, 1988. Each decision rejected a separate over-the-counter acquired lands oil and gas lease offer filed by Connell for lands within the Hiawatha National Forest in Michigan. See Appendix A. BLM rejected each offer in its entirety, making essentially the same statement as that contained in its decision regarding ES 37879:

> In accordance with 43 CFR 3111.2-2 the applicant is required to submit three copies of a map upon which the desired lands are clearly marked showing their location with respect to the administrative site or project of which they are a part. Because you have failed to provide such a map and because the passage of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 [(FOOGLRA),

> P.L. 100-203, Title V, Subtitle B, 101 Stat. 1330-256 through 1330-263] precludes amending your [offer], your offer is hereby rejected. [1/]

BLM also provided an additional ground for rejecting certain lands in each offer; the minerals were not Federally owned. 2/ In his statement of reasons (SOR) at page 10, appellant concedes that to the extent BLM rejected his offers as to lands in which the minerals were not Federally owned, its decisions are correct. Therefore, we affirm those parts of the decisions under appeal rejecting the offers for lands not containing Federally owned minerals.

The sole issue for consideration in these appeals is whether BLM properly rejected the offers for failure to include three copies of a map of the lands sought. The regulation cited by BLM in its decisions, and, in effect at the time the offers were filed, 43 CFR 3111.2-2, provided in pertinent part:

> (a) If the lands have been surveyed under the rectangular system of public land surveys, the lands shall be described by legal subdivision, section, township, range and meridian. * * *
>
> (b) If the lands have not been surveyed under the rectangular system of public land surveys, they shall be described as in the deed or other document by which the United States acquired title to the land or minerals. If the desired lands constitute less than the entire tract acquired by the United States, it shall be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the lands.
>
> (c) In those instances where the acquiring agency has assigned an acquisition number to the tract applied for, a description by such tract number shall be required in addition
> to the description otherwise required by paragraph (a) and in
> lieu of the description otherwise required by paragraph (b) of this section.

1/ On Jan. 10, 1989, appellant filed a motion to consolidate 11 cases, IBLA 89-92 through 89-102, because they involved the rejection by BLM of 17 oil and gas lease offers for lands in the Hiawatha National Forest for failure to comply with the map requirement. In an order dated Apr. 4, 1989, the Board took that motion under advisement, in part because 3 of the 17 offers were for public domain lands, rather than acquired lands, and in part because BLM cited other grounds for rejection in some of its decisions. Five of the appeals are consolidated for disposition in this decision. The other six appeals are disposed of by order of this same date.

2/ The acreage in each offer that was determined not to contain Federally owned minerals was 2,080 acres in ES 37879; 1,735.46 acres in ES 37868; 240 acres in ES 37875; 120 acres in ES 37880; and 612.19 acres in ES 37883.

> (d) Each offer submitted under paragraphs (b) and (c) of this section shall be accompanied by 3 copies of a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part.

Under this regulation, acquired lands oil and gas lease offers for lands surveyed under the rectangular system of survey had to include a land description in accordance with that system (paragraph (a)). If such lands were not so surveyed, the requirements of paragraph (b) were applicable. Under paragraph (c), if the acquiring agency had assigned an "acquisition number" to the tract applied for, an offer filed in accordance with paragraph (a) was required to include "a description by such tract number" "in addition to" the survey description, while the acquisition number was to be utilized "in lieu of" the description otherwise required by paragraph (b). Paragraph (d) imposed the map requirement on "[e]ach offer submitted under paragraphs (b) and (c)."

The BLM decisions held that appellant failed to comply with the requirements of paragraph (d) of the regulation. Appellant contends, however, that the regulatory requirement to submit a map comes into play only for offers "submitted under paragraphs (b) and (c)" and that his offers were not submitted under either of those paragraphs.

Appellant points out that his offers were for lands which had been surveyed under the rectangular system of public land surveys and, as required by paragraph (a) of the regulation, the offers contained land descriptions by legal subdivision, section, township, range, and meridian. He then argues that the map requirement should apply only where lands have not been surveyed under the rectangular system of surveys (paragraph (b)) or where the acquiring agency has assigned an acquisition number (paragraph (c)). He asserts that his offers do not fall under either paragraph (b) or paragraph (c) of the regulation. In the alternative, appellant suggests that since paragraph (d) applies to offers submitted under paragraphs (b) and (c), it should only apply where lands have not been surveyed and the acquiring agency has assigned an acquisition number.

There is no question that paragraph (b) is inapplicable because the lands involved have been surveyed under the rectangular system of public land surveys. Thus, the question is whether paragraph (c) is applicable, and if so, whether its applicability triggers the map requirement of paragraph (d) for appellant's offers. We conclude that even if it does apply, the map requirement did not apply to appellant's offers.

In Beard Oil Co., 97 IBLA 66 (1987), and Beard Oil Co. (On Reconsideration), 98 IBLA 299 (1987), aff'd sub nom., Plomis v. Lujan, No. 87-2893 (D.D.C. July 17, 1990), the Board explored at length the meaning of "acquisition number," as used in 43 CFR 3111.2-2(c). That case involved acquired lands oil and gas lease offers filed by Beard Oil Company for lands in the Manistee National Forest in Michigan. BLM rejected Beard's offers because they failed to describe the lands by "acquisition number," holding that that

term included tract numbers, line numbers, case numbers, or any other identifying number utilized by the acquiring agency. We reversed BLM, concluding that the term "acquisition number" was inherently ambiguous and "did not necessarily include "line" or "case" numbers," and an offeror could not be presumed to know that case or line numbers were to be included in an offer as "acquisition numbers." 98 IBLA at 301. Our conclusion was consistent with the principle announced in Arthur E. Meinhart, 5 IBLA 345, 350 (1972), and cited in Beard Oil Co. (On Reconsideration), 98 IBLA at 302, that "an applicant will not be held to have lost a statutory preference right for failure to comply with the requirement of a regulation unless that regulation is so clearly set out that there is no basis for his noncompliance."

In this case, appellant was required to comply with paragraph (a) of 43 CFR 3111.2-2, because the lands had been surveyed. In addition, he was required to comply with paragraph (c), to the extent the Forest Service had assigned "acquisition numbers." But we need make no determination regarding compliance with that paragraph. BLM did not charge a failure to comply with that paragraph and review of appellant's offers reveals that, in addition to providing the information required by paragraph (a), he included what he described in his offers as "Acquisition #" and "Line #." Based on the Forest Service worksheets of deed examination included in the case files, what appellant described as "Acquisition #" corresponds to the Forest Service's "case number."

[1] Under the language of 43 CFR 3111.2-2(c), an additional requirement is imposed on offers for surveyed land. However, for unsurveyed land, there must be compliance with either paragraph (b) or (c), depending on the circumstances. Thus, where paragraph (d) requires maps for offers submitted "under paragraphs (b) and (c)," our conclusion is that it does not refer to offers for surveyed land, which are filed under paragraph (a) and, where appropriate, paragraph (c).

Examination of the regulations which predated 43 CFR 3111.2-2, as well as those presently in effect, support such a conclusion. Appellant states that when 43 CFR 3111.2-2 was promulgated, there was no explanation in the preamble to the proposed regulations (47 FR 28550 (June 30, 1982)) or in the preamble to the final regulations (48 FR 33648 (July 22, 1983)) relating to paragraph (d). Appellant suggests that since the preamble to the proposed regulations highlighted the substantive changes to the regulations and paragraph (d) was not mentioned, the Department intended no substantive change with the promulgation of paragraph (d).

The prior corresponding regulation, 43 CFR 3101.2-3 (1982), provided, in pertinent part:

> (a) Surveyed lands. If the land has been surveyed under the rectangular system of public land surveys and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range. * * *
>
> (b) (1) Lands not surveyed under the rectangular survey system. * * *

> (2) Each offer or application must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part (such map need not be submitted where the desired lands have been surveyed under the rectangular system of public land surveys, and the land description can be conformed to that system).
>
> (3) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted. Such offer or application must be accompanied by the map required by paragraph (b)(2) of this section. [Emphasis added.]

Appellant concludes from this language that "there appears to be no regulatory intent to require maps for surveyed lands described by aliquot part" (SOR at 7). We agree.

If, prior to 1983, the regulations did not require a map for an acquired lands oil and gas lease offer for surveyed lands which could be described by aliquot part and the 1983 rulemaking promulgating the regulation presently under consideration made no substantive changes to the map requirement, the conclusion is inescapable that no map was required to accompany appellant's offers.

Effective June 17, 1988, the Department revised the regulation relating to acquired lands oil and gas lease offers (53 FR 22842 (June 17, 1988)). It now appears at 43 CFR 3110.5-3. Paragraphs (d) and (e) of that regulation provide:

> (d) Where the acquiring agency has assigned an acquisition or tract number covering the lands applied for, without loss of priority to the offeror, the authorized officer may require that number in addition to any description otherwise required by this section. If the authorized officer determines that the acquisition or tract number, together with identification of the State and county, constitutes an adequate description, the authorized officer may allow the description in this manner in lieu of other descriptions required by this section.
>
> (e) Where the lands applied for do not conform to the rectangular system of public land surveys, without loss of priority to the offerer, the authorized officer may require 3 copies of a map upon which the location of the desired lands are clearly marked with respect to the administrative unit or project of which they are a part. [Emphasis added.]

Under the current regulation, BLM has discretionary authority to require an offeror to provide an acquisition number and maps, but consistent with 43 CFR 3101.2-3 (1982), the regulation makes clear that the map

requirement only applies to lands whose description do not conform to the rectangular system of public land surveys. There is no reason to construe 43 CFR 3111.2-2 to require otherwise. 3/

There is no indication in the records of these cases that the Forest Service or BLM had any difficulty identifying the lands sought by appellant. As we stated in Beard Oil Co., 97 IBLA at 72-73, the purpose of the regulation is that the offeror provide a description sufficient to identify the land sought in an acquired lands lease offer. In this case, that was done. See Sam P. Jones, 45 IBLA 208 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed in part and reversed in part and remanded to BLM to proceed with adjudication of the offers.

Bruce R. Harris
Administrative Judge

I concur:

Wm. Philip Horton
Chief Administrative Judge

3/ In our Apr. 4, 1989, order we also requested appellant to address the question whether a lease offer filed with BLM on Dec. 22, 1987, was "pending on the date of enactment" of FOOGLRA. One of the offers in this case, ES 37883, was filed on Dec. 22, 1987. Appellant addressed the question in his SOR, arguing that the legislative history of FOOGLRA, particularly the H.R. Conf. Rep. No. 100-495, 100th Cong., 1st Sess. 781, reprinted in 1987 U.S. Code Cong. & Admin. News at 2313-1527, shows that Congress considered whether to cut off the filing of over-the-counter offers on a particular date and had before it language referring to offers filed "prior to" a particular date. Appellant contends that Congress rejected such a methodology and used the language "pending on the date of enactment." That language, he states, includes Dec. 22, 1987. We find no reason to disagree with appellant's analysis.

APPENDIX A

DECISION DATE	IBLA NO.	OFFER NO.	LAND SOUGHT
9/27/88	IBLA 89-92	ES 37879	7,386 acres in T. 42 N., R. 17 W., Michigan Meridian
10/06/88	IBLA 89-99	ES 37868	2,563 acres in T. 46 N., R. 23 W., Michigan Meridian
10/06/88	IBLA 89-100	ES 37875	1,250 acres in T. 43 N., R. 21 W., Michigan Meridian
10/07/88	IBLA 89-101	ES 37880	3,727 acres in T. 42 N., R. 20 W., Michigan Meridian
10/07/88	IBLA 89-102	ES 37883	1,290 acres in T. 46 N., R. 19 W., Michigan Meridian